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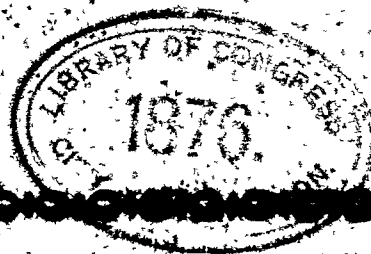
PROCEEDINGS

OF THE

COUNCIL OF CENSORS

OF THE STATE OF

VERMONT



WINDSOR

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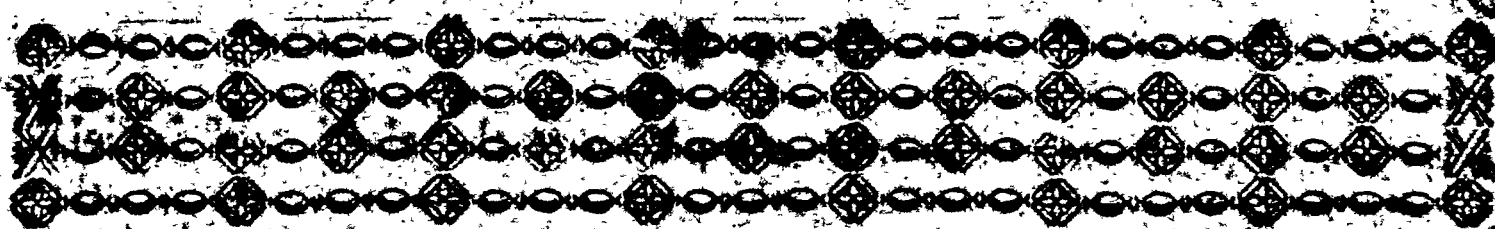
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22.2. Oct. 25. 1807



PROCEEDINGS, &c.

To the Freemen of the State of Vermont.

YO.U.R. Council of Censors, elected agreeably to the XLIV. Section of the Constitution, after having maturely considered the frame of government which has been the rule of political conduct for the inhabitants of this State, the last septenary; highly approving the principal part of it; with the greatest diffidence of their own judgment, and respect for the patriotism and abilities possessed by the formers of the present Constitution, have proposed certain alterations, heretofore offered to your consideration. In so doing we principally had in view rendering government less expensive, and more wise and energetic; objects, in the opinion of this Council, more especially during the infancy of a Commonwealth, worthy the attention of its freemen: the taxes which have been collected some years past for the support of government, demonstrate the expediency of the former; and every man's observation will suggest to him the necessity, for our political happiness and credit, of having government properly maintained, and the judicial and executive offices therein filled by persons of the greatest wisdom and virtue.

In the proposed alterations, we endeavored to guard in future against what is esteemed by this Council (our circumstances considered) to have been an error in the Constitution, electing persons to judicial and executive trusts *during good behaviour*; as it invested them with estates in their offices, which, without an alteration of the Frame of Government, cannot be legally taken from them, but by proving, in a judicial course of proceeding, instances of mal-administration. We therefore left it in the power of the Governor, Council, and Assembly, (whom we view in the present condition

condition of the State, to be most competent to the election of judicial, and the several executive officers, which in the proposed alterations they are authorized to choose) annually to leave out any one who shall be found unequal to, or otherwise improper for his trust, and appoint a more suitable person in his place. But this Council is not without hope that the ensuing septenary will furnish men so adequate to those offices, that the tenure of them may, consistent with the public interest, be put upon a more stable footing.

We also endeavored, after the example of some other States, to guard against the future introduction of an aristocratic power, destructive of the common weal, by providing that the same person should not at one time be invested with too many important offices, especially where one would be a hindrance to his properly discharging the duties of the other. And likewise to prevent any family, or party, in future, having it in their power to establish a set of connexions prejudicial to the community, by providing that certain officers, of the greatest influence and importance, should, at stated periods, be reduced to the common level; and by being thus constantly reminded of their political mortality, be induced to act well their parts while on the stage.

This Council proposed for your option two plans for electing Counsellors and Representatives in Assembly, each differing from the mode now in use, but one of them necessarily consequent to the design of reducing the number: if either meets with your approbation, we shall be happy; yet cannot but wish the choice of Representatives in a County Convention may have a trial for one septenary.

In reviewing the proceedings of the legislative and executive branches of government, and examining whether they have performed their duty, "as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they were entitled to by the Constitution," it affords us great pleasure to find matters of commendation; yet accompanied with the mortification of having some to censure. But as the Constitution has allotted us solely the last, and more unpleasant task, we can only in general observe, that, under God, this Commonwealth is much indebted, even for its present existence as a separate community, to that undaunted firmness, and prudent vigilance for the public safety, which has been usually maintained in the legislative and executive departments, since the

the era of our independence.——At open war with the most potent nation in Europe;—frequently threatened with invasions from a sister State, & by her insidious arts a powerful disaffection fomented within the bowels of this Commonwealth—denied relief from the authority who alone under Heaven could give it: We have reason to look up with gratitude to that Being who is wisdom, and by whom a few husbandmen, unexperienced in the arts of governing, have been enabled to pilot the ship through storms and quicksands, into the haven of independence and safety; and to admire when we consider how much was to be done, and by whom, that it has been so well done.

But we are obliged to check such agreeable thoughts, and however irksome to our feelings, turn our attention to the province allotted us; censuring such unconstitutional proceedings as may be drawn into precedent, if left unnoticed.

We would premise in the words of Judge Blackstone, that, “in all tyrannical governments, the right both of making & of enforcing the laws, is vested in one and the same man, or one and the same body of men, and wherever these two powers are united together, there can be no public liberty.” The Convention who framed the Constitution of this State, aware of this, by a decided distribution of power, assigned the legislative authority to the Representatives of the people in General Assembly, and the supreme executive to the Governor and Council; and from the last again severed the judicial, and rendered it independent of both. And to preserve this balance of power, thus carefully made, and guard against any encroachment of one on the proper authority of either of the other, the Convention made it the duty of the Council of Censors to inquire, “Whether the legislative and executive branches of government have assumed to themselves, or exercised, other or greater powers than they are entitled to by the Constitution.”

In how many soever instances therefore, the legislative and executive authorities have transgressed the limits marked out to them by the Constitution, and intruded upon the province allotted to the other, (whatever temporary reasons they might have for so doing) they are certainly in those particulars deserving of severe censure, as such conduct, from persons entrusted with the important charge of making and executing laws, (by trampling upon the fundamentals of government which ought to be held sacred)

sacred) naturally tends to introduce tyranny on the one hand, or anarchy on the other.

In some instances, however, it is probable that the Constitution has been invaded through necessity, in times of extreme danger, when good men were induced to hazard all consequences for the sake of preserving our existence as a people; yet in a review of these proceedings we have thought proper to advert even to such breaches of the Constitution, lest they should be made use of as precedents, when no such necessity shall exist.

Some instances of the Council's assuming power not delegated to them, we now proceed to select from their Journal.

On the 11th June, and 20th October, 1778, they take the very extraordinary step of divorcing Lurania M'Clean, and Ruth Chamberlain, from their respective husbands, and declaring their right of marrying again.

On the 14th November, 1781, they resolve, that Doctor John Page, be remitted one fourth part of the debt due from him to Colonel William Marsh, on account of his debts being contracted in continental money. It is to be observed that the debts of Colonel Marsh, by the confiscation of his estate, had before that time become the property of this Commonwealth; and that in April 1781, the law fixing a general scale of depreciation for all debts contracted in continental money, had passed. Why then Doctor Page should be made an exception to the general rule, or from whence the authority was derived that in this instance altered or dispensed with the operation of the law, we are left in the dark.

In the several acts of the Legislature respecting the survey of town lines, the Governor and Council are, in the opinion of this Board, invested with the sole power and trust of adjusting the accounts of the several persons employed in running those lines: yet we find that in March 1784, the Council resolve, "That the Surveyor-General settle the accounts of the several Surveyors under his direction, for their services in running town lines, and draw orders therefor, or for the payment thereof, on the hard money tax."

This (however respectable the character of the Surveyor-General may be) appears to this Council to have been delegating a trust, committed to them solely to execute, and into very unsuitable hands, as it effectually destroyed the check intended by the Legislature upon the Surveyor's department. And in the view of this Council, it was a disposition of the public money
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not intended or authorized by the Legislature, as ample provision appears to have been made by law for compelling the proprietors and inhabitants of the several towns to defray the expence of those surveys.

On the 15th February, 1782, the Legislature enacted, "That *all* public acts, papers and *records*, that belong to the State, (excepting the particular records and papers of the Council) be deposited and remain in the hands of *the Secretary of State*." "That he at test and register charters of incorporation, grant copies of all records," &c. On the 10th March, 1784, the Council resolve, "That *the Secretary of Council* keep in *his office*, all the *records*, and copies of *charters of lands granted previous to October 1781*;" and that, "on account of the disputes respecting bounds of townships, which may occasion the alteration of some charters already given, he be directed not to record any more charters, till the further order of Council."

How the Secretary of State, and Secretary of the Council, can both, at the same time, possess the records of charters granted previous to October 1781; or from whence the Council derive their power to alter or contravene acts of the Legislature, when it is by the Constitution made a principal part of their duty to see them faithfully executed, is beyond our comprehension: nor do we readily conceive in what manner charters already completed can, with propriety, suffer an alteration.

On the 9th of March, 1784, the General Assembly, in order to facilitate what had been so long and ardently wished for by them, and every good subject of this State, a final settlement of the public accounts, to enable the Auditors to detect embezzlements, (if any) and the Legislature to provide for the payment of debts due from confiscated estates; made it the duty of the Auditors to call on all persons who had acted in the capacity of Commissioners of Sequestration, &c. for such books, bonds, deeds, notes, and papers, as had come to their possession by virtue of their appointment; and the said books and papers to inspect, examine, and liquidate; and to record in proper books, the estates, real and personal, which had been confiscated; specifying which had been sold, by whom, & whose order, and the several amounts in real value. - And if any person, possessed of any such public papers, should neglect to deliver them to the Auditors, after demand made by them in writing for that purpose, he was by said act to forfeit a sum, not exceeding twenty-five thousand pounds.

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The Auditors having (as this Council is informed) made such demand in writing, of the Honorable John Fasset, Esq; for the papers in his custody as Commissioner of Sequestration and Sales, and he having refused delivering them agreeable to the demand, the Auditors directed a suit to be commenced against him for the penalty contained in the act. Subsequent to which, (we do not *assert it was done with the view of embarrassing the Auditors in the performance of their duty, or of screening one of their members*, but it had this effect) on the 16th of October, 1784, the Council received papers of this kind from Mr. Fasset, (by him declared on oath to be the whole, to the best of his knowledge and remembrance) which had come to his hands as Commissioner of Sequestration, and *discharged him therefrom accordingly*. Of this transaction, (although a quorum of the Auditors were then, and for thirteen days after, at the place where the Council sat) the Auditors were kept in profound ignorance; and if the uncommon severity of the season had not prevented, the Sheriff would have served their writ upon Judge Fasset some time after he was discharged from the papers by the Council. How the Auditors are now to come at those papers, time must discover.

It appears from the Journal of Assembly, that in February session 1782, a grant was made to John Wheeler and his associates, of a gore of land adjoining Lunenburg; but difficulties having occurred in ascertaining the precise local situation of Lunenburg, it appears from the Journal of Council, that a charter was directed to be made out on the 28th of October last, of another gore, *in lieu of the former, but without a previous grant being made by the Assembly*. This proceeding being so evident an infringement upon the power vested in the Assembly, and at so late a period, calls for the severest censure of the freemen, and of this Council.

We now beg your attention in a retrospective view of such acts of the Legislature as we have selected for that purpose, some of which are of general concern, and very important in their consequences, while the operation of others is confined within narrower limits, and scarcely worthy public notice for any other reason than lest they be drawn into precedent.

We would previously observe, in the words of the great Mr. Locke, who speaking of legislative power, lays it down as the fundamental law of all Commonwealths, "That the legislative cannot assume to itself a power to rule by extemporary and arbitrary decrees, but is bound to dispense

law and justice, and to decide the rights of the subject by *promulgated standing laws*, and *known authorized Judges*. And that men give up their natural independence to society with this *trust*, that they shall be governed by *known laws*; otherwise their peace, quiet, and property, will be in the same uncertainty as in a state of nature."

The first act of legislation we shall notice, is the last clause of a statute passed 23d February, 1779, entitled, "*An act making the laws of this State temporary*;" by which it is enacted, "That no Court or Justice, shall take cognizance of any matter or thing in which the title of land is concerned, or in any action of contract, where the parties appear to have made a bargain or contract, by note, bond, debts, or agreement in writing, or otherwise; any act or law to the contrary notwithstanding." This statute, together with those other passed from time to time, prohibiting the trial of the titles to land, appears to this Council to militate against the ninth article in the Bill of Rights, which is expressive of the design of forming social compacts, viz. "That every member of society hath a right to be protected in the enjoyment of life, liberty, and *property*," against the thirteenth article in the Bill of Rights, "That in controversies respecting property, and in suits between man and man, the parties have a *right to a trial by jury*, which ought to be held sacred:" and also against these words of the XXIII^d Section in the Frame of Government, "*All Courts shall be open, and justice shall be impartially administered without corruption or unnecessary delay.*"

We would ask how property is to be legally protected, if not by the several Courts administering justice according to the known laws of the land? How parties can be said to enjoy their right of trial by jury, when the Legislature prohibit a trial of any kind? And how Courts can with propriety be called open, within the meaning of the Constitution, or justice be administered therein impartially, without unnecessary delay, when they are disabled to take cognizance of any matter wherein the title of land is concerned, and of any action founded upon a contract, which are nine tenths of the causes where justice is sought? How far the singular condition of real property within this Commonwealth, & our peculiar political situation, ought to extenuate shutting the Courts of Justice with respect to landed property, is with you to decide: but a Legislature's preventing suits being brought upon *all private contracts*, is an unheard of transaction,

and one which we presume will not be accounted for by the impartial world, and by posterity, upon principles very honorable to the promoters of it.

The laws to prohibit the judicial Courts trying land titles, above alluded to, passed 22d October, 1779, 8th November, 1780, 5th March, 1784, and 29th October, 1784.

The act passed by the Legislature on the 22d of October, 1779, "*appointing Commissioners for the better regulating titles of land within this State, and declaring their power,*" (although this Council is not informed that any trials in pursuance of it have been completed) ought not to escape your notice.

This act appoints five persons Commissioners, any three of whom are empowered to take into consideration, and fully examine all the evidence relating to, or respecting the titles of controverted lands in this State : to send for persons ; to administer oaths ; to call upon the parties for charters, patents, deeds of conveyances, &c. and to examine the parties upon oath. And they were to make report to the Assembly, at their next session in October, which of the various claimants to the same land ought, *in justice and equity*, to possess, and forever hold the fee of, said land, &c. &c. The act prescribes a mode of process for convening the parties, makes provision for hearing them for and against the report of the Commissioners, and declares, that the resolution of the Assembly thereupon (when recorded) shall be an indisputable title to the lands, against all parties in the trial.

It is very usual for all public bodies, whether consisting of one, or many natural ones, whose power is short of despotic, to wish for an increase of it ; and to aim at that object as invariably as the needle, without obstruction, points to the pole. Here was an extensive grasp at the agreeable desideratum of uncontrolled dominion : trials by jury, in the most important disputes concerning property, wholly thrown aside : the Legislature assuming to themselves the judicial power, so far as respected all the permanent property in the State, and casting aside all restraints of law in their decisions ; they were to determine every cause, without being shackled with rules, but by their crude notions of equity ; or in other words, according to their sovereign will and pleasure. By which means all the landed interest in the Commonwealth (which in other nations and states, has

has constantly been viewed as sure and permanent to the owner) would be at the absolute disposal of the Legislators, and the surest title to an estate in Vermont would be the favor of its Assembly : and this chain of adamant would be effectually riveted, as redress (without a dissolution of government) could not be expected ; none but the Legislature whose interest it would be to withhold it, being competent to give it.

What means were made use of by a kind over-ruling providence to prevent this law being carried into execution we have not learned, but have much reason to be grateful for the event.

The last preceding observations render it unnecessary to say any thing more respecting an act passed October 22d, 1779, entitled, "*An act constituting the Superior Court a Court of Equity, and declaring their power ;*" and an act passed 22d February, 1781, "*For quieting disputes concerning landed property ;*" than that they appear to have originated from the same source ; and were designed to exalt the legislative, at the expence of the judicial department ; as the former gives the Governor, Council, and Assembly, the powers of a Court of Chancery, in all causes exceeding four thousand pounds consequence, and the latter erects them into a Court for the decision of all disputes between proprietors holding under different charters issued by the same authority.

The several statutes passed for obliging creditors to accept the produce of the country, in lieu of money, are also considered by this Council as violations of that protection, which, by the general and fundamental laws of society, and by the ninth article in the Bill of Rights above-mentioned, every individual has a right to expect for his property, upon his entering into civil society. We leave them however, (if that *can* be the case) to be justified by the extremity of the times, and hope for better, when such expedients shall be thought unnecessary.

The acts alluded to in the last preceding observation, passed 21st June, 1782 ; October 21, 1782 ; and 25th February, 1783.

The act to *suspend prosecutions against Joseph Farnsworth, Esq.* passed 29th October, 1784, is also esteemed by this Council to merit the serious attention of the freemen of a Commonwealth, which has yet a character to gain amongst the kingdoms and states of the earth. It declared, " That no actions should be commenced, prosecuted, or proceeded in, against Joseph Farnsworth, Esq. Commissary-General of Purchases, for contracts made

made by him in his public capacity, as Commissary, until the rising of the Legislature in October then next."

It is the undoubted duty of the Legislature, when there is an absolute necessity of substituting credit for money, to do it with as much caution as a prudent man would in his private affairs; and as carefully to guard against a diminution of that credit, by providing means of payment at the prefixed time, as a discreet merchant would in his mercantile transactions: and if a State is deficient in these prudential maxims, the odium ought to be proportionate to the magnitude of the consequences.

It is therefore with real concern this Council observes, that so many precedents have been afforded of late years, in this western hemisphere, of breach of contracts made on behalf and by authority of the public, as with many, in a great degree, to sanctify the measure: and that after proceeding from one delusion to another, it has terminated in the almost total loss of public credit. And it is with equal satisfaction we have remarked that this State has, in general, shewn an honest disposition in fulfilling its contracts with individuals, so far as has been in the power of government, by paying them something of real value. This the Legislature has been enabled to perform, by levying taxes in some degree proportionate to the public expences, and enforcing the collection of them: and if the exigencies of the community have necessitated the contraction of debts, the good disposition manifested in discharging those debts, has preserved our public credit with individual; and the trifling depreciation which the public securities of this State have at times undergone, has proceeded rather from a scarcity of specie, and the example of surrounding States, than a fear of their being redeemed at their original value.

The act above-mentioned in favor of Mr. Farnsworth, is considered by this Council as one stride towards the destruction of that credit; and the more injurious to the persons interested, as they must have waited a considerable time upon the public before passing the act. A few more legislative procrastinations would have taught individuals the folly of trusting their property *where the power and disposition to evade payment were united.*

It behoves the freemen, in the opinion of this Board, as a matter of the last importance, to keep a watchful eye over every step of government which tends to sap public credit, and to manifest their severest resentment thereat.

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We cannot dissolve the Council of Censors, with the pleasing satisfaction of having conscientiously discharged the trust reposed in us, if we omit noticing (however disagreeable it may be to many influential persons in this Commonwealth) a law passed by the Legislature in their last session, under the title of, "*An act for settling disputes respecting landed property.*" This Council is of opinion, considering the various difficulties of coming to the knowledge of a good title to lands in this Commonwealth, which originated from, and have been cherished by, the contentions of different States claiming this territory, it is equitable that provision should be made by the Legislature, in favor of persons who made *bona fide* purchases from pretended owners, while it was out of their power to know with certainty in whom the title was vested : (though we cannot agree in sentiment with the Legislature, that the defrauded purchaser should be allowed to recover his damages, both from his voucher and the owner of the soil.) But that trespassers, who have no pretence of a title, should, by legislative authority, be enabled to recover from the legal owners, (who, in numberless instances, have been kept out of possession solely against their will, and to their great impoverishment) the value of their improvements, is sanctifying iniquity by law ; and, by a *post facto* act, depriving the owners of such property of their right of action against the trespassers : (which remedy when the intruder has done more injury than benefit to the farm, it is *equitable* the owner should have) and it is giving a reward to persons for transgressing the laws. In whatever light this part of the act is viewed, it may truly be said to be unprecedented and unparalleled ; & will, unless revised and materially altered, be an indelible blot in the annals of our history, affords our enemies the most solid argument they have yet offered against the reasonableness of our existence as a sovereign State, and be the greatest inducement to our friends to desert us, as having too little wisdom, or too much *cunning*, to hold the reins of an independent government.

We are sorry occasion is afforded us to remark, that the Legislature, especially in the former part of the septenary, have in some instances deviated from the humane spirit manifested in the XXVth Section of the Frame of Government : that by directing corporal punishment to be inflicted for offences not infamous in their natures, that chastisement is rendered less disgraceful to the delinquent, and less beneficial to society, where the crimes require it.

Not ought the fickleness of the Legislature, and their want of deliberation in passing laws, to escape the observation of this Council. Few acts of general concern, but have undergone alterations at the next session after the passing of them; and some of them at many different sessions: the revised laws have been altered—re-altered—made better—made worse; and kept in such a fluctuating position, that persons in civil commission scarce know what is law, or how to regulate their conduct in the determination of causes. If the Legislature in this particular have *intended* to be faithful guardians of the people, they have *acted* as very unsteady or improvident ones.

It is the opinion of this Council, that the General Assembly, in all the instances where they have vacated judgments, recovered in due course of law, (except where the particular circumstances of the case evidently made it necessary to grant a new trial) have exercised a power not delegated, or intended to be delegated, to them by the Constitution. This mode of proceeding is an assumption of the judicial power in the last resort, and renders nugatory that important article in the Bill of Rights which provides, “That in all suits between man and man, the parties have a *right to a trial by Jury, which ought to be held sacred.*” It supercedes the necessity of any other law than the pleasure of the Assembly, and of any other Court than themselves: for it is an imposition on the suitor, to give him the trouble of obtaining, after several expensive trials, a final judgment agreeably to the known established laws of the land; if the Legislature, by a sovereign act, can interfere, reverse the judgment, and decree in such manner, as they, unfettered by rules, shall think proper. If such is their constitutional authority, it would be a mercy to prohibit any other persons than themselves the exercise of judicial powers. The legislative body is, in truth, by no means competent to the determination of causes between party and party, nor was by our Constitution, or that of any other country who make pretences to freedom, ever considered so (not taking into view the amazing expence it would bring upon the public, and the disadvantage of its engrossing that time which ought to be occupied in their more important and proper employment of legislating.)

If one set of men are to enact and execute our laws, and when they do not find one to answer a particular purpose, to make it *instante*; or in other words, if they are to possess all the authority as Judges, which they as Leg flators

Legislators are pleased, from time to time, to confer on themselves, and happy indeed is the lot of this people.

The instances alluded to of judgments being vacated by legislative acts are as follows, viz. "An act to set aside, and render null and void in law, a certain order therein mentioned," passed 6th March, 1784: "An act to reverse the several judgments therein mentioned," passed 9th March, 1784: "An act to secure Daniel Marsh in the possession of a certain farm, until he shall have opportunity of recovering his betterments, and nullifying several judgments rendered against him," passed 18th June, 1785: and, "An act confirming Andrew Graham, of Putney, in the county of Windham, in the quiet and peaceable possession of the farm on which he now lives, in said Putney; and rendering all judgments respecting the possession of the same, heretofore had and rendered, by any Court of law whatsoever, null and void;" passed 18th June, 1785.

Similar to annulling judgments, is the power exercised of staying executions after judgments rendered; of which, in reviewing the acts of legislation, we find two instances: one entitled, "An act to stay the execution on a judgment given by the Superior Court, against Witherly Wittum, Malachi Wittum, and Witherly Wittum, jun. in favor of David Caswell and Thomas White," passed 25th February, 1782: the other passed 8th March, 1784, entitled, "An act to stay an execution, and grant a sum of money for the purpose of paying and satisfying the said execution." [The title of this last act, it is to be observed, carries a greater show than substance of equity in it: the State was obliged in honor, and by promise, to indemnify the defendants: the act, after judgment, constrained the creditor to take public securities at par, both for his damages, and a large bill of costs expended in the suit.]

Granting pardons by the Legislature, (except in cases of impeachment, and perhaps in those of treason and murder) is an evident infringement upon the constitutional prerogative of the executive Council, and as such ought not to escape your notice. Yet we find this power exercised by the Assembly on the 26th of October, 1784, in the way of resolution, (which was exceptionable for the mode, if on no other account) in the following words. viz. "Resolved, that Lemuel Roberts, and Noel Potter, be, and they are hereby pardoned (on account of their former merit and present submission) for their offence against the peace and dignity of the freemen of this

this State, in being concerned in, & leading on in a riot, for the rescuing one Carr, out of the hands of the Sheriff's deputy, some time in May last."

If the exercise of this power had been left in its constitutional channel, *former merit and present submission*, might perhaps have been considered as proper reasons for mitigating the fines, but not for complete pardons, in crimes tending to the dissolution of government.

Although this Council conceives the check intended by the XIVth Section of the Frame of Government, if carried into execution, to be very inconvenient in practice, and expensive to the State; yet while the Constitution absolutely requires bills of a public nature to be printed for the consideration of the people, before they are passed into laws, we cannot esteem the legislature excusable in omitting it; and the notion of treating the general system of our statutes as temporary, we consider as an evasion of an article in the Constitution, thought by the Convention to be of importance.

On the 28th of February, 1782, the Legislature passed a law, entitled, "*An act empowering Colonel Samuel Robinson, to give a deed of the lands hereafter described, to the heirs of William Emms, deceased; and vacating a certain deed of the premises obtained in a fraudulent manner, by John Blakledge Emms, from said Samuel Robinson.*" This Council cannot here omit observing, in addition to the reasons already given against the Legislature's exercising judicial powers, and reversing judgments, that the practice of legislating for individuals, and for particular cases, is much too frequent. If a subject feels himself aggrieved, and thinks the law incompetent to give him redress, he immediately applies to the Assembly; and too often laws are suddenly passed upon such application, to relieve in particular cases, which introduce confusion into the general system, or are afterwards discovered to be wholly unnecessary. The act last mentioned (admitting the Legislature to be a proper Court for determining whether a deed was fraudulently procured) was entirely needless;—the Supreme Court, possessing the powers both of a Court of Law and Equity, being able to give proper relief in this and all other cases of fraud. When a person obtains a property, which the law of the land at the time of acquiring it esteems a legal and equitable estate, if he is divested of it by a sovereign act of power, he has a right to complain of the injury; and all men of interest have a right, and it is their duty, to be alarmed at the precedent: if this was not the case,

case, Colonel Robinson ought not to have applied to the Assembly, or they to have interfered.

That part of the act passed in the last session of the Legislature, *for erecting the new county of Addison*, which authorizes the Governor and Council to appoint county officers therein for the time being, is esteemed by this Board to be an unnecessary violation of the XXVIIth Section of the Frame of Government. We are unable to imagine the particular circumstances of this part of the Commonwealth to have been such, as to require adopting so extraordinary a measure, for any other purpose than to give a lead at some future county election.

In our enquiries whether "the public taxes have been justly laid and collected in all parts of this Commonwealth;" we must offer it as our opinion, that neither has been fully the case. With regard to the equal collection of them, so many occurrences have intervened, known to the freemen at large, that the executive part of government does not appear greatly deserving of censure for their remissness in this respect;* but in apportioning the taxes this Council does not believe full justice has been done: all our towns are new, and a part of the most populous ones still uncultivated;—tradesmen of all kinds, and men of genius, are every where much wanted:—it must not certainly be therefore, as "good guardians of the people," that *faculties are rated, and unimproved real property, and articles of luxury, left without assessment*. In the opinion of this Council, visible property, in proportion to its real value, is the only fit subject of taxation (except the Legislature shall find it expedient to impose a small tax on polls, not minors, for personal protection;) and every deviation from this rule, whether to exculpate one class of men, or to harass another, is an error in government, and ought to be exploded our future system of taxation.

One branch of the duty assigned this Council is to enquire "in what manner the public monies have been disposed of." In discharging this part of the trust reposed in us, we cannot omit mentioning the dissipation of a considerable part of the public lands in this State, at so early a period that settlements could not be made, and in most cases were not stipulated to be made, before the conclusion of the war; and at a time when actual surveys could not be performed: by which means an ample foundation is

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laid

* For a state of the arrearage of taxes, see Appendix.

laid for the confusion proceeding from interfering grants—a door open for a variety of lawsuits, and applications to the Legislature to procure compensation for lands which the grantees are unable to hold; and the public is deprived of a fund, which, if rightly managed, would probably defray the ordinary expences of government. The ungranted and confiscated lands seem to have been a boon conferred by providence, for the support of our republic in its infancy, while its subjects were unable to pay taxes: yet the first septenary has seen the whole, or nearly the whole of them, squandered; and the inhabitants will have reason to think themselves peculiarly fortunate, if they yet escape paying considerable sums on account of them. How far the peculiar difficulties the State has been obliged to struggle through, ought to excuse this lavish disposition of the public property, must be decided by you, to whom all officers are mediately, or immediately, accountable for their conduct.

This Council is not insensible that the freemen look to this Board for information, with respect to the confiscation and sale of the estates of persons who joined the enemy; and are unhappy, that after obtaining all the light in our power, we think it most prudent to refer them to such report as the Auditors shall make on this subject. And we are also unhappy, that being destitute of a complete state of the public accounts from the Auditors, (which we have repeatedly requested of them) it is out of our power to make further enquiries in what manner the public monies have been disposed of. Nor ought this Council here to omit noticing that the General Assemblies, previous to February 1784, are, in the idea of this Council, highly censurable for omitting to enact laws adequate to compel the annual liquidation of the public accounts: and that the Council are not free from blame for the appointment, and continuance of persons in office of great public trust, who did not keep regular books: by which means (we conclude from the information of those Auditors who have taken an active part in the business) several public accounts of a very important nature, can never be properly adjusted; and the *defaulters of unaccounted thousands* will probably reserve them for their families.

We have now, in an imperfect manner, finished the important and invidious task allotted this Council—censuring the proceedings of the supreme legislative and executive branches of government, composed of gentlemen of the best characters, and greatest influence, in the Commonwealth. A principle

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principle of duty has led us to speak our sentiments with a freedom, which, we are not insensible, will be disagreeable to many : but as we have been actuated solely by a desire of contributing our mite to the honor and felicity of the community, and are conscious of no sinister or personal motives in our proceedings, we cheerfully submit our opinions to your candid consideration ; and if we are so unhappy as materially to differ in sentiment from that respectable body, the freemen of the State of Vermont, we must console ourselves with the pleasure of having meant well, and that it is the lot of humanity to err.

By order of the Council of Censors,

INCREASE MOSELEY, President.

Bennington, 14th February, 1786.

Note—In printing the proposed alterations of the Constitution, offered to the public by the Council of Censors, the words, *in any term of six years*, were omitted in the XXVIIth Section of the Frame of Government next after the words *three years* : the sentence being, *No man shall be capable of being a Delegate to represent this State in Congress for more than three years in any term of six years.*

A P P E N D I X

A P P E N D I X

TH E arrearage of taxes due from the several towns in the State of Vermont, 1st January, 1786, viz.

Towns.	Tax on Year the pound.	gran- ted.	Arrearages.		
			£.	s.	d.
Sunder- land.	6d.	1784	55	16	11
	2d.	do.	18	2	9
	3d.	1785	29	1	11
	4d.	do.	33	17	11
			£.	136	19 6
Sand- gate.	5d.	1783	•	7	2
	4d.	1785	6	10	•
	3d.	do.	2	7	10
			£.	9	5 0
Derfet.	6d.	1784	18	8	0
	4d.	1785	43	9	8
	3d.	do.	9	2	8
			£.	71	0 4
Shaft- bury.	6d.	1784	150	14	•
	2d.	do.	13	14	5
	4d.	1785	152	19	3
	3d.	do.	114	14	9
			£.	432	2 5

Towns.	Tax on Year the pound.	gran- ted.	Arrearages.		
			£.	s.	d.
Ben- nington	5d.	1783	56	5	3
			£.	27	15 2
Reu- pert.	7d.	1782	1	0	1
	4d.	1785	15	17	10
	3d.	do.	10	17	3
			£.	27	15 2
N.Stam- ford.	6d.	1781	0	16	7
	6d.	1784	6	19	3
	2d.	do.	6	3	10
	4d.	1785	11	16	0
	3d.	do.	8	17	2
			£.	34	12 10
Pownal	6d.	1784	46	11	3
	2d.	do.	7	11	7
	Defi. of soldiers.	do.	234	0	0
	4d.	1785	92	13	1
	3d.	do.	69	9	10
			£.	45	5 9
Arlington					

Towns.	Tax on Year the pound.	gran- ted.	Arrearages.		
			£.	s.	d.
Arlington.	5d.	1783	15	1	0
	3d.	do.	10	18	0
	6d.	1784	3	15	8
	2d.	do.	1	16	2
	4d.	1785	51	0	9
	3d.	do.	38	5	6
			120	17	1
Manchester.	6d.	1784	154	10	9
	2d.	do.	45	5	6
	4d.	1785	90	16	0
	3d.	do.	68	1	10
			358	14	1
Clarendon.	8d.	1781	82	9	8
	7d.	do.	41	6	0
	6d.	do.	89	15	0
	6d.	1784	26	19	10
	2d.	do.	21	9	9
	4d.	1785	4	8	0
	3d.	do.	23	7	1
			289	15	4
Ira,	3d.	1783	0	12	1
	6d.	1784	21	4	8
	2d.	do.	7	1	6
	4d.	1785	1	2	10
	3d.	do.	0	11	4
			30	12	5

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Towns.	Tax on Year the pound.	gran- ted.	Arrearages.		
			£.	s.	d.
Poultney,	2d.	1782	1	15	1
	5d.	1783	60	13	1
	6d.	1784	73	0	0
	2d.	do.	24	6	8
	Def. of soldiers.	do.	72	0	0
	4d.	1785	52	8	3
	3d.	do.	39	6	1
			323	9	8
Shrewsbury,	5d.	1783	8	5	8
	6d.	1784	9	19	4
	4d.	1785	7	8	11
	3d.	do.	5	11	7
			31	5	6
Pittsford,	7d.	1782	5	10	11
	2d.	do.	2	18	2
	5d.	1783	1	0	0
	2d.	1784	3	13	4
	4d.	1785	24	10	0
	3d.	do.	18	6	1
			55	18	6
Rutland,	2d.	1782	18	8	6
	6d.	1784	105	12	6
	4d.	1785	79	11	2
	3d.	do.	59	13	6
			263	5	8
			Danby.		

Towns.	Tax on the pound.	Year granted.	Arrearages.		
			£.	s.	d.
Danby,	7d.	1781	1	0	0
	6d.	do.	1	0	4
	2d.	1782	2	6	8
	4d.	1785	52	5	6
	3d.	do.	39	4	0
		£.	95	16	6
Tinmo.	7d.	1782	59	15	7
	2d.	do.	27	10	6
	5d.	1783	72	5	0
	3d.	do.	4	3	1
	6d.	1784	90	13	3
	2d.	do.	30	4	8
	4d.	1785	61	14	9
	3d.	do.	46	6	1
		£.	392	12	11
Pawlet.	2d.	1782	4	18	7
	3d.	1783	0	9	4
	6d.	1784	79	16	5
	2d.	do.	26	12	0
	Defn. of soldiers.	do.	126	0	0
	4d.	1785	58	15	4
	3d.	do.	44	1	6
		£.	340	13	2

Towns.	Tax on the pound.	Year granted.	Arrearages.		
			£.	s.	d.
Wells.	2d.	1782	1	18	3
	6d.	1784	33	11	3
	2d.	do.	11	3	4
	4d.	1785	26	1	1
	3d.	do.	19	10	7
		£.	92	4	6
Castleton.	6d.	1781	1	0	8
	2d.	1782	0	7	3
	4d.	1785	19	17	6
	3d.	do.	11	8	1
		£.	32	13	6
Wallingford	8d.	1781	10	15	0
	2d.	1782	2	7	10
	5d.	1783	28	9	11
	3d.	do.	17	1	11
	4d.	1785	23	4	6
	3d.	do.	17	6	3
		£.	99	5	5
Harwich.	8d.	1781	6	13	4
	7d.	do.	5	16	8
	6d.	do.	5	0	0
	4d.	1785	4	1	9
	3d.	do.	3	1	4
		£.	24	13	1

Rockingham.

Towns	Tax on the pound.	Year granted.	Arrearages.		
			£	s.	d.
Rockingham	2d	1782	12	3	10
	6d	1784	87	0	2
	2d	do.	29	0	0
	Def. of soldiers	do.	126	0	
	4d	1785	56	17	1
	3d	do.	42	12	8
			353	13	9
Whitingham	3d	1782	2	3	3
	2d	1784	1	10	1
	4d	1785	18	12	5
	3d	do.	7	18	5
			30	4	2
Townshend.	2d	1782	5	12	3
	5d	1783	29	16	10
	3d	do.	12	5	10
	6d	1784	35	19	4
	2d	do.	11	19	9
	4d	1785	27	9	8
	3d	do.	20	12	4
			143	16	0
Wilmington.	2d	1782	8	16	9
	3d	do.	2	7	8
	6d	1784	34	1	10
	2d	do.	4	3	3
	4d	1785	36	3	3
	3d	do.	27	1	6
			112	14	3

Towns	Tax on the pound.	Year granted.	Arrearages.		
			£	s.	d.
New-Fane.	2d	1782	3	13	0
	6d	1784	22	13	8
	2d	do.	14	6	5
	4d	1785	32	0	0
	3d	do.	24	0	0
			96	13	1
London-derry.	6d	1784	3	12	0
Hindf-dale.	7d	1782	6	15	7
	2d	do.	8	16	2
			14	11	9
Brattleboro'	2d	1782	3	19	9
	3d	1783	20	4	3
	6d	1784	40	1	0
	2d	do.	2	8	0
	Def. of soldiers.	do.	69	16	0
	4d	1785	52	9	3
	3d	do.	65	12	0
			254	10	3
Dummerston.	7d	1782	17	7	7
	2d	do.	25	17	3
	5d	1783	10	12	0
	6d	1784	82	2	3
	2d	do.	27	6	3
	4d	1785	54	6	3
	3d	do.	30	16	7
			248	8	2

Putney

Towns	Tax on the pound.	Year granted.	Arrearages.		
Putney	2d	1782	£.	s.	d.
	4d	1785	27	0	9
	3d	do.	84	19	5
			63	14	5
			£.	175	14 7
Halifax	7d	1781	48	1	7
	6d	do.	59	4	10
	7d	1782	26	8	6
	2d	do.	17	18	5
	3d	1783	4	5	0
	6d	1784	3	3	3
	2d	do.	13	10	1
	Defi of soldiers	do.	48	13	9
	4d	1785	51	10	10
	3d	do.	38	12	11
			£.	311	9 2
Marlborough	8d	1781	0	15	2
	7d	1782	6	4	0
	2d	do.	10	17	7
	5d	1783	2	0	0
	3d	do.	24	12	8
	6d	1784	7	6	11
	4d	1785	33	10	0
	2d	do.	25	2	8
			£.	110	9 0
Westminster	2d	1782	7	6	11
	6d	1784	117	9	10
	2d	do.	39	2	11
	Defi. of soldiers.	do.	180	0	
	4d	1785	89	6	4
	3d	do.	66	19	9
			£.	500	5 9

Towns	Tax on the pound	Year granted	Arrearages.		
Guilford	8d	1781	£.	s.	d.
	2d	1782	34	14	2
	5d	1783	12	1	1
	6d	1784	53	10	6
	Defi. of soldiers	do.	6	7	8
		do.	198	0	0
Jamaica	4d	1785	27	10	7
	3d	do.	27	12	3
			£.	359	16 2
	5d	1783	5	5	5
Athena	4d	1785	4	10	1
	3d	do.	3	11	11
			£.	13	7 5
	6d	1781	6	14	7
Thomlinson	2d	1782	3	13	10
	5d	1783	9	2	2
	3d	do.	2	9	4
	Defi. of soldiers	1784	18	0	0
	4d	1785	11	13	4
	3d	do.	8	15	6
			£.	60	8 9
Norwich	8d	1781	6	13	4
	7d	do.	5	16	8
	6d	do.	5	0	0
	2d	1782	4	13	4
	5d	1783	4	2	6
	3d	do.	2	9	4
	6d	1784	4	18	11
	2d	do.	1	13	4
	4d	1785	4	1	9
	3d	do.	3	1	3
			£.	39	10 5